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**STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
FACT FINDING**

CITY OF LIVONIA

-and-

MICHIGAN AFSCME COUNCIL 25,
LOCAL 192

MERC Fact Finding
Case No. D04-1227

Report

Thomas L. Gravelle, Fact Finder

April 24, 2006

FINDINGS, RECOMMENDATIONS AND REASONS

The fact finding hearing of this matter was held on February 6 and 27, 2006 in Livonia, Michigan.

The City is represented by George T. Roumell, Jr., Esq. and Gregory T. Schultz, Esq. Also appearing for the City were Robert F. Biga, Michael Slater, Robert Beckley, Frank Audia, Mitch Singer, and John Hahka.

The Union is represented by Ben K. Frimpong, Esq. Also appearing for the Union were Jeanette DiFlorio, Kenneth Grzembski, Debbie Seeman, Ed Hoffman and Yvonne Lillibridge.

I have reviewed the parties' exhibits, testimony and post-hearing written arguments.

FACT FINDING LAW AND RULES

Section 25 of the Labor Mediation Act (LMA) of 1939, 1939 PA 176, as amended, provides for fact finding as follows:

When in the course of mediation ..., it shall become apparent to the commission that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the commission may make written findings with respect to the matters in disagreement. The findings shall not be binding upon the parties but shall be made public.

Rule 137 of the Administrative Rules of the Employment Relations Commission, R 423.137, explains the contents of the fact finder report as follows:

Rule 137. (1) After the close of the hearing, the fact finder shall prepare a fact finding report which shall contain:

- (a) The names of the parties.
- (b) A statement of findings of fact and conclusions upon all material issues presented at the hearing.
- (c) Recommendations with respect to the issues in dispute.
- (d) Reasons and basis for the findings, conclusions and recommendations. ...

MERC has explained that "factfinding is an integral part of the bargaining process." County of Wayne, 1985 MERC Lab Op 244; 1984 MERC Lab Op 1142; *aff'd* 152 Mich App 87 (1986). The fact finder's report reinstates the bargaining obligation and should be given serious consideration. City of Dearborn, 1972 MERC Lab Op 749.

BACKGROUND

The City of Livonia is the Employer.

Michigan AFSCME Local 192 (the "Union") represents non-supervisory civilian employees in the following City divisions: DPW, City Hall, Clerical, Library, Engineering and Planning.

There are four other bargaining units in the City: AFSCME Local 1917 representing civilian supervisors of the Local 192 employees; the Livonia Fire Fighters Association representing fire fighters; POAM representing patrol officers; and the Livonia Sergeants and Lieutenants' Association representing police command officers.

The City also has some unrepresented employees.

The previous contract between the City and Local 192 expired on November 30, 2004. (The City's fiscal year is December 1 through November 30.)

Except for the issues discussed below, the parties have agreed to the terms of a new collective bargaining agreement, for the three-year period December 1, 2004 through November 30, 2007.

The following issues have been presented to me:

1. Wages and Retroactivity of Wage Increases
2. Health Insurance
3. Pensions and VEBA
4. Direct Deposit
5. Tree Removal
6. Finance Account Clerk

OVERVIEW: ABILITY TO PAY

In recent years, the City of Livonia – like many local units of government in Michigan – has experienced financial distress. The parties' proposals should be considered with this fact in mind.

The City's financial condition includes the following:

- Between fiscal year 2000 and fiscal year 2004, the City's annual total General Fund revenues decreased by a small margin. (City Ex. 17). This shows that the City's revenues have been **flat** in recent years. However, health insurance premiums have sky-rocketed. Between 2000 and 2004, health insurance costs have increased by \$1.42 million (or 45%) for active employees, and by \$2.32 million (or 65%) for retirees. In 2004, the total cost to the City for health insurance costs for active employees and retirees was \$10.47 million. (City Ex. 20). Other costs also have increased, although less dramatically.

- The only reason the City is not insolvent is that it has balanced its budget by not filling 89 employment vacancies, and by restricting capital spending and other costs. Municipal finance expert Frank W. Audia of Plante & Moran (which firm audits the City) explained that the City is legally required to perform various services, with the result that it cannot continually balance its budget through attrition (continuing to not fill vacancies).

– Because the City is already over 96% developed, it cannot “grow” itself to increase revenues.

– For the 2004 fiscal year, the City's General Fund balance equaled 10% of its General Fund expenditures. Mr. Audia of Plante & Moran explained that a general fund balance is used for cash flow management. The City does not have a line of credit. At 10%, a community's general fund balance may be compared to an individual who expects to earn \$30,000 a year (after taxes), who tries to hold his spending to \$30,000 a year, and who has total savings at the start of the year of \$3,000. In other words, a 10% balance gives a community (or an individual) narrow leeway. Mr. Audia stated that a **10%** general fund balance historically has been considered ***the minimum acceptable percentage***. (For the City, it would equal only 36 ½ days of expenditures.) The eight comparable communities cited by the City¹ had an average fund balance of **28%**. The three communities which both parties have cited as comparable to the City of Livonia had the following fund balances for the 2004 fiscal year:

Clinton Township	53.1%
Troy	37.3%
Westland	6.1%

The average fund balance for these three comparable communities is: **32.2%**.

¹ The City's comparable communities are those in the tri-county area with populations within 25% +/- of the City's population.

– At the fact finding hearing, Mr. Audia of Plante & Moran explained that Michigan municipal finance may be viewed as “a three-legged stool.” One leg is **(a)** property taxes. Another leg is **(b)** state shared revenue. The third leg is **(c)** other revenue (such as fees and construction permits). For the fiscal year ending November 30, 2004, 54.5% of the City’s revenue came from property taxes; 18.7% from State shared revenue; and 26.8% from other revenue sources.

(a) Property taxes. Under the 1978 Headlee Constitutional Amendment, increases in real estate taxes are limited to increases in the inflation rate, which have been very low for a number of years. Further, the following interplay of the Headlee amendment, the Proposal A Constitutional Amendment, and the Michigan General Property Tax Act, as amended in 2000, creates a perverse result when real estate is sold (or transferred): When real estate undervalued for local millage taxation is sold (or transferred) above the inflation rate, the millage rate must be reduced for every remaining taxable real estate parcel within the community. In other words, such sales or transfers have the consequence of reducing taxable value below millage value. As explained by the City at page 8 of its brief, “Now, when millage rates are rolled back [or reduced], the cap is essentially permanent unless the voters of the community reauthorize the millage rate.”² For the period 1995-2005, the City estimates it has lost almost **\$67 million** in property tax revenue by reason of Proposal A. (City Ex. 14). Another concern about the City’s property tax revenue is that the Ford Motor Company has petitioned the Michigan Tax Tribunal to reduce its valuations on its two properties

² Voters often do not favor raising their taxes.

on Plymouth Road in Livonia by 73%, with a potential reduction to the City's revenues of \$856,645.

(b) State shared revenue. The Michigan Constitution requires the State of Michigan to share a percentage of the state sales tax collection with local units of government. However, the state legislature has been using a significant portion of the state sales tax collection to fund the State's own enormous deficits. Under this program, the State of Michigan's payments to the City between fiscal year 99/00 and fiscal year 03/04 **declined by 20.2%**, from \$11,491,251 in fiscal year 99/00 to \$9,166,074 in fiscal year 03/04. For the years 2001-2004, the City received **\$4.27 million less** than what it would have received if its 2000 shared revenue had remained constant. The projected state-wide underfunding of Constitutionally mandated shared revenue for fiscal year 2005/2006 is about 33%.

(c) Other revenue. In *Bolt v City of Lansing*, 459 Mich 152; 587 NW2d 264 (1998), the Michigan Supreme Court held that a "fee" which exceeded the cost of regulation was a disguised tax which was unenforceable under the Headley Amendment because not approved by the city's voters. *Bolt* has had the effect of reducing the use of "fees" to generate local government revenue. Similarly, a 2000 amendment to the State Construction Code Act has redefined much more narrowly how costs are calculated in setting fees on plumbing, electrical, mechanical and certain other building permits.

Because of the above facts, the City has been forced for four years to not fill vacancies, and to restrict its capital expenditures. Because employee compensation

is a major part of the City's budget, caution is necessary in making financial commitments to the City's employees.

DISPUTED ISSUES

1. WAGES AND RETROACTIVITY OF WAGE INCREASES

*The Union proposes the following wage increases with **full** retroactivity:*

12/1/04	1% increase across-the-board
12/1/05	3% increase across-the-board
12/1/06	2% increase across-the-board (with retroactivity if not settled prior)

The Union also proposes that the "increases be applied to all wages earned by union employees, during the applicable time period, whether currently on the books or not (ie., retired, terminated, deceased.)"

*The City proposes the following wage increases with **no** retroactivity:*

12/1/04	1% increase across-the-board
12/1/05	3% increase across-the-board
12/1/06	1% increase across-the-board

The City also proposes "Wages are to become effective upon ratification."

A. Findings of Fact

From 1984-1985 to the present, all City bargaining units have received the same wage increases. No bargaining unit has yet agreed to a wage increase for the year beginning December 1, 2006.

Because of its financial concerns, the City is offering a 1% increase for 2006-2007. (The parties' are in agreement on the wage increases for the two year period beginning December 1, 2004).

The Union is requesting a 2% increase for 2006-2007.

In reviewing average employee overall compensation for the three-year period December 1, 2004 through November 30, 2007, under the City's proposal "overall there is a projected increase of **\$5,270, or 8.5% per employee** over the three years of this contract. (City Ex. 23)." City Brief, p 17.

B. Recommendations

I recommend that (1) the City's proposed wage increases be adopted; (2) these wage increases be retroactive to December 1, 2004 if the parties succeed in reaching agreement on a new collective bargaining agreement; and (3) retroactivity will apply to those individuals who are employees of the City on the date the new agreement is ratified.

C. Reasons

The parties agree on the percentage increases for the first two years of a new contract. They differ on the third year by 1%.

This difference should be considered in tandem with the issues of retroactivity, overall compensation, and the City's ability to pay.

The City has proposed no retroactivity of wage increases for the following reason: "The City takes the position that, because of increasing health care insurance and the fact that Local 192 has not participated in any cost containments from December 1, 2004 forward, wages should not be retroactive." City Brief, p. 26.

The parties have negotiated in good faith in their complex and difficult negotiations; and I am recommending some changes on health care issues to provide some financial relief to the City. In addition, I am recommending only a 1% wage

increase for 2006-2007. In these circumstances, I think that wage increase retroactivity on ratification of a new agreement is a fair result.

I am not recommending retroactive payments of wage increases for former employees. This would be in the nature of a "windfall" which the City cannot afford.

2. HEALTH INSURANCE

The City proposes that the current health insurance language be changed as follows:

1. Increase prescription drug co-pay to \$10.00 generic/\$20.00 formulary/\$30.00 non-formulary.
2. Adopt Community Blue Option 2 in place of the current PPO.
3. Increase emergency room co-pays to \$50.00.
4. No proposed change on dental allowance.
5. Monthly co-pay for medical of \$35.00 for single/\$45.00 for two person/\$50.00 family.
6. Increase office visit co-pays to \$25.00.
7. Employee contribution for medical insurance of 50% of all increases in premiums above 5% per year.
8. Future retirees will have the same health insurance as active employees.

The Union proposes that the current health insurance language be retained except for the following changes:

1. \$10.00 Generic; \$20.00 Name Brand RX Card.
2. HMO may be replaced by POS.
3. Employees to pay \$25.00 for Emergency Room Visits (which charge will be waived if the person being treated is admitted to a hospital).
4. Dental allowance of \$600 per year may be used for dental insurance premiums, at employee's option.

A. Findings of Fact

Between 2000 and 2004, the costs for active and retiree medical insurance increased dramatically. City Brief p. 14 explains:

There has been a total change for active employees of \$1,421,655, or a 45% increase in costs between 2000 and 2004. (City Ex. 20). For retirees, the increase between 2000 and 2004 has been \$2,316,883, or a 65% increase. (City Ex. 20). The total increase for both active employees and retiree medical insurance is \$3,738,538, or a 56% increase. This is a whopping increase. (City Ex. 20). The total cost for the City in 2004 for health insurance was \$4,611,399 for active employees, \$5,859,287 for retirees, or a total of \$10,470,686. (City Ex. 20). This is a staggering figure. Faced with stagnant property tax collections and reduced state aid, the pressures on the City's financial resources to pay for employee health insurance, including the increases, as well as negotiated wage increases, is obvious.

At present, retirees receive the same health insurance benefits they received when they retired.

B. Recommendations

I recommend that the parties agree to the following:

1. Increase prescription drug co-pay to \$10.00 generic and \$20.00 brand.
2. Adopt Community Blue Option 2 in place of the current PPO
3. Payment of monthly medical insurance premiums as follows: \$30.00 for single/\$35.00 for two person/\$40.00 for family.
4. Payment of a \$10.00 co-pay per medical office visit.
5. Payment of a \$25.00 co-pay per emergency room visit (waived if visit leads to hospitalization).
6. Future retirees to have the same health insurance as active employees.

I do **not** recommend other proposals, such as an employee contribution of 50% for all increases in health insurance premiums above 5% per year.

The City has agreed to the Union's proposal that employees at their option may use their annual \$600 dental allowance for dental insurance premiums, and has stated that it will adopt the language on this point that is in another City agreement.

C. Reasons

As explained above, the parties face a health insurance crisis and the City cannot afford to fund health insurance at present levels without seriously undermining its ability to provide services. Between 1999 and 2005, health insurance costs have increased between 72% and 93% for various City health care plans. The City's unfunded liability for retiree health care increased from about \$28 million to \$74 million between 1998 and 2003, even though the City's contributions almost doubled (from \$3 million to \$5.9 million) over the same period.

1. Increasing the prescription drug co-pay to \$10 generic and \$20 brand will provide some financial relief to the City. Further, two of the City's other unions (Firefighters and Lieutenants and Sergeants) have been paying \$10 and \$20 in recent years.

2. The Community Blue, Option 2 plan provides some improvements over the current PPO, and as explained by health care expert Mitch Singer, "It's a very popular plan with counties and municipalities in general." (City Ex. 47 at 146). It also would provide the City with some cost relief.

3. The monthly premium payable by employees for medical insurance of \$30.00 for singles, \$35.00 for two persons, and \$40.00 for families has applied to bargaining unit members hired on or after December 1, 1994. For families, the \$40 per month premium sharing would equal about 4% of the total cost of the premium. Various studies in both the public and private sectors show that this is at the low end of employee premium sharing.

4. A \$10.00 co-pay per office visit will provide some help to the City and is not too onerous. Further, City health insurance expert Singer explained that the City's proposed \$25.00 co-pay per office visit is a little bit aggressive.

5. The City's proposed \$50.00 co-pay per emergency room visit (waived if visit leads to hospitalization) seems somewhat steep to me despite Mr. Singer's explanation that it is "very standard." The Union's proposed \$25.00 co-pay (waived if visit leads to hospitalization) will provide some relief to the City and will not unduly burden employees.

6. Future retirees having the same health insurance as active employees will help to reduce heavy insurance costs and will simplify the City's administration of health insurance plans. Further, it makes some sense for future retirees to have the same plans as active employees (who in a sense bear the burden of retiree health care costs).

I am not recommending that employees be liable for 50% of annual increases of health insurance premiums above 5%. My reason is that I think this would place too much risk on the employees at a time when the employees (through neither the

employees' nor the City's fault) are being asked to make some sacrifices because of the City's financial crisis.

3. PENSIONS AND VEBA

The City proposes that effective upon ratification:

(a) The City will increase its contributions to the Defined Contribution Plan from 7% to 8% for employees hired after March 17, 1997, and from 12% to 13% for employees hired prior to March 17, 1997 who opted to participate in the Defined Contribution Plan;

and

(b) Employee 3.1% Defined Benefit Plan contributions will be discontinued, with the employees contributing 2% of it into a Voluntary Employee Benefit Account (VEBA) to be used for the employees' retirement health care, and the balance of 1.1% being retained by each employee as part of salary.

The Union proposes that the City increase its contributions to the Defined Contribution Plan from 7% to 8% and from 12% to 13%, and that for the Defined Benefit Plan the age and years of service provisions be reduced to age 53 and 27 years of service. If both parts of the Union's proposal are not adopted, the Union withdraws its proposal, with the savings used to fund health care insurance.

A. Findings of Fact

The parties' defined benefit plan is currently fully funded, whereas retiree health insurance is not. As explained above, the City's unfunded liability for retiree health care increased from about \$28 million to \$74 million between 1998 and 2003, even though the City's contributions almost doubled (from \$3 million to \$5.9 million) over the same period.

The parties' 2001-2004 agreement stated in part: "Employees who are 55 years of age with 30 years of service are entitled to retire with full pension benefits."

B. Recommendation

I recommend that the City's proposal be adopted.

C. Reasons

The key to the City's proposal is establishing a VEBA (as part of the City's overall proposals to obtain some relief for its burgeoning health care liabilities to its future retirees). The purpose of a VEBA is to create an account in which current employees accumulate money to provide partial payment for their health costs after they retire.

Further, the City has proposed to do so by eliminating employee contributions to their defined benefit plan and using that money (3.1%) to fund the VEBA (2%), – with the balance of 1.1% being folded into wages as a wage increase. Ex 58.

The City's proposal (which also includes its increasing contributions to employee defined contribution plans) is a creative way to reduce its future liabilities for retiree health insurance without also reducing the current compensation of employees. On this point, its defined benefit plan employees will not have to contribute 3.1% of their compensation to the defined benefit plan, and in addition will receive a raise of 1.1%.

I am not recommending that for the Defined Benefit Plan the age and years of service provisions be reduced to age 53 and 27 years of service. This proposal is unsupported by an actuarial report explaining its cost. Further, no compelling reason has been offered for this proposal.

4. DIRECT DEPOSIT

The City proposes direct deposits for all employees in lieu of paychecks.

The Union proposes that employees continue to have the option of direct deposits for their paychecks.

A. Findings of Fact

Most employees already have direct deposits for their compensation.

It is less expensive to the City to use direct deposits.

B. Recommendation

I recommend that the Union's proposal be adopted.

C. Reasons

A minority of employees prefer paper checks for some reason. Issuance of paper checks is traditional; and the financial cost to the City to continue issuing paper checks to these employees will be modest.

5. TREE REMOVAL

The City proposes to eliminate Section 55.B of the contract, which reads:

B. Tree Removal.

Falling of trees, whether live or dead, which are larger than six (6) inches in diameter shall be done by Employees in the classification of Tree Trimmer or Tree Artisan.

The Union proposes that Section 55.B of the contract be retained.

A. Findings of Fact

Director of Public Works Robert Beckley explained that there are no employees in the classification of Tree Trimmer and only one employee remaining in the classification of Tree Artisan. Other employees have received training in large tree felling and have been doing the occasional work of felling large trees.

The Forestry work unit is now a part of the Park Maintenance section. Forestry encompasses tree care and maintenance.

Union Steward Kenneth Grzembski testified that it can be dangerous to fell larger trees. He added that if an employee who is not classified as a Tree Trimmer or Tree Artisan is afraid to fell the larger tree, the City does not require him to do so.

B. Recommendations

I recommend that the City's proposal be adopted. On this point, I also recommend that an employee can decline a request to fell trees larger than six inches in diameter if the employee has not been trained to do so and has a genuine concern for his own safety.

C. Reasons

This language in practice no longer has relevance because of the absence of Tree Trimmers and Tree Artisans.

However, if the Union were to insist on strict enforcement of this language, it could have the effect of the City's contracting out the work of large tree felling.

6. FINANCE ACCOUNT CLERK

The City proposes to exempt the Finance Account Clerk after the present incumbent leaves the position.

The Union *proposes* that the Finance Account Clerk position remain a bargaining unit position.

A. Findings of Fact

The Finance Account Clerk position is a bargaining unit position.

The Finance Account Clerk has access to some confidential information.

There has been no showing that the Finance Account Clerk has disclosed confidential information.

B. Recommendation

I recommend that the Union's proposal be adopted.

C. Reasons

A request for a recommendation that a bargaining unit position be eliminated is unusual in a fact finding proceeding.

The City has not shown any actual prejudice in having the Finance Account Clerk in the bargaining unit.

Respectfully submitted,



Thomas L. Gravelle
Fact Finder